

reason, Rule 22.539 and, to the extent it pertains to one-way paging, Rule 22.569 should be rescinded on reconsideration.

IV. THE R&O's DEFINITIONS OF "INITIAL" AND "MODIFIED" APPLICATIONS ARE PREJUDICIAL AND SHOULD BE REVERSED

The definitions of "initial" and "proposed" 931 MHz applications adopted in the R&O should be rejected and reformulated because they will:

- impede the growth of expanding local and regional 931 MHz systems;
- discriminate against 931 MHz paging, relative to 929 MHz paging and narrowband PCS contrary to the Budget Act; and
- confer a vast and inexplicable windfall on tower and site owners.

A. Absent Reversal, Expansion Of Local And Regional 931 MHz Systems Will Be Artificially Constrained

The definitions for 931 MHz "modification" and "initial" applications adopted in the R&O will substantially inhibit networks in this frequency band that are evolving to provide wide-area metropolitan and regional coverage. For many carriers, this process is incremental-- cash flows from existing operations fund the investment needed to expand existing facilities. The new rule is antithetical to that process; carriers poised for expansions entailing addition of transmitters more than two kilometers from existing sites will face the risks and vagaries of mutually exclusive applications, petitions to deny, and competitive bidding, rather than a clear expectation that they can extend their coverage

footprint consistent with their financial capabilities, on the one hand, and the needs of the marketplace, on the other.

**B. The New Definitions Discriminate
Against 931 MHz Paging**

Equally important, the proposed definitions will create a sharp disparity between 931 MHz wide-area systems and competing private carrier systems operating on exclusive 929 MHz channels or narrowband PCS. Under recently implemented rules, 929 MHz licensees operating on exclusive frequencies have been immunized from competing, mutually exclusive applications when they:

- relocate or add transmitters more than two kilometers from existing sites in the interior of their systems;^{28/} and
- relocate or add transmitters more than two kilometers from existing sites on the perimeter of their systems.^{29/}

As already demonstrated, 931 MHz licensees could face competing, mutually exclusive applications in both these situations if the definitional regime proposed by the R&O is implemented. As a consequence, a 929 MHz system will have considerably more flexibility than its 931 MHz rival to expand facilities to accommodate changing demand conditions. The R&O provides no justification for bestowing 929 MHz carriers with this significant competitive advantage.

^{28/} See Section 90.495(a) of the Commission's Rules, 47 C.F.R. § 90.495(a).

^{29/} See Section 90.495(f) of the Commission's Rules, 47 C.F.R. § 90.495(f).

This rule also disadvantages 931 MHz carriers relative to narrowband PCS. Narrowband PCS is licensed by market area, thus avoiding the threat of MX applications when systems are expanded within the licensed area. Thus, with respect to system expansion, 931 MHz suffers a distinct disadvantage compared to 929 MHz and narrowband PCS. Yet, 931 MHz, 929 MHz and narrowband PCS all constitute CMRS; as such, the Budget Act mandates that these separate but closely related services face comparable technical and operating requirements.^{30/}

C. The New Definitions Bestow An Exorbitant Windfall On Site Owners

Whatever the framers' intentions, the proposed definitions provide an enormous economic windfall to site and tower owners and lessors who provide space to 931 MHz licensees. This windfall is unrelated to marketplace values or laws of supply and demand, but is an inevitable consequence of the definitions' inherent rigidity and impracticality.

Under the R&O's framework, parties leasing antenna space for 931 MHz facilities now have an indisputable incentive to terminate existing arrangements and demand exorbitant rent increases and other concessions from licensees. To elude this extortion, the licensee must either acquire and license a substitute site within two kilometers of the subject site, or file an "initial" application and pray that no MX (and auction) ensues. If no

^{30/} The Budget Act requires that all services reclassified as CMRS be "subjected to technical [and operational] requirements that are comparable. . . ." Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3) (1993).

alternate site can be obtained within the two kilometer limit imposed by the new definition of a "modification" application, the only option certain to avoid a potential auction is to accede to the landlord's coercion. Faced with these choices, it is safe to predict that many licensees will submit to the landlord's demands, thus fostering a situation that is ripe for exploitation by owners and lessors.

D. The Proposed Solution Of Market-Based Licensing Is Illusory

The R&O states that "[the Commission] would like to consider market area licensing for paging operators in a future rule making proceeding."^{31/} Although ProNet strongly supports market area licensing for systems licensed on RCC spectrum, such a vague promise of Commission action, by itself, cannot alleviate the concerns raised by the new definitions.^{32/} There is no guarantee that the Commission ever will institute such a rule making proceeding; and even if it did, there is no guarantee of its outcome. Therefore, because these new definitions will govern 931 MHz applications for the foreseeable future, they must be amended

^{31/} R&O, ¶ 105.

^{32/} The R&O instructed the Common Carrier Bureau, before the effective date of the new rules (*i.e.*, January 1, 1995), to resolve or prepare for Commission resolution all 931 MHz applications previously granted but subject to petitions for reconsideration and all such applications subject to applications for review, respectively. R&O, ¶ 99. As of December 19, 1994, over three months after the new rules' were adopted, and just two weeks from their effective date, neither the Bureau nor the Commission has acted on a single petition for reconsideration or application for review.

in order to allow 931 MHz systems to compete effectively with its 929 MHz and narrowband PCS counterparts.

V. CONCLUSION

As demonstrated above, provisions of the R&O are seriously adverse to operators of conventional RCC systems, especially 931 MHz band operators. Particularly detrimental are policies and rules relating to retroactive imposition of a new 931 MHz processing procedure on pending applications, implementation of "one frequency at a time" (especially with respect to applications acquired incident to the sale of a bona fide, ongoing business), and establishment of new definitions for "initial" and "modification" 931 MHz applications. ProNet has explained why each of these provisions should be repealed or revised on reconsideration.

Viewed collectively, however, these deficiencies in the R&O are symptomatic of a more general, conceptual inadequacy concerning the Commission's regulatory framework for RCC spectrum-- namely, licensing of these frequencies on an individual transmitter basis. Juxtaposed to the growth and consolidation that typifies the conventional paging industry today, this licensing approach is simply anachronistic.

In the last decade of the twentieth century, paging systems customarily comprise scores if not hundreds of transmitting sites covering vast geographic expanses. The constituent facilities include a sophisticated control network providing for simulcast

transmission, and a single system control point. In light of these characteristics and the impending advent of a new "high tech" rival in narrowband PCS, transmitter-by-transmitter licensing is discriminatory and unfair to incumbent operators of traditional systems. The Commission must engraft on RCC paging spectrum what narrowband PCS (and broadband PCS, cellular, ESMR and, to a lesser extent, 929 MHz exclusive paging) already have, market area licensing.

In its final paragraphs, the R&O states that the Commission "would like" to consider market area licensing "in a future rulemaking proceeding." From ProNet's perspective, this statement is much too vague and indefinite. To maintain equity with its natural competitors and ensure maximum consumer choice, the Commission should immediately initiate a rulemaking to consider adoption of market area licensing for RCC paging systems.

Respectfully submitted,

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